



Early Journal Content on JSTOR, Free to Anyone in the World

This article is one of nearly 500,000 scholarly works digitized and made freely available to everyone in the world by JSTOR.

Known as the Early Journal Content, this set of works include research articles, news, letters, and other writings published in more than 200 of the oldest leading academic journals. The works date from the mid-seventeenth to the early twentieth centuries.

We encourage people to read and share the Early Journal Content openly and to tell others that this resource exists. People may post this content online or redistribute in any way for non-commercial purposes.

Read more about Early Journal Content at <http://about.jstor.org/participate-jstor/individuals/early-journal-content>.

JSTOR is a digital library of academic journals, books, and primary source objects. JSTOR helps people discover, use, and build upon a wide range of content through a powerful research and teaching platform, and preserves this content for future generations. JSTOR is part of ITHAKA, a not-for-profit organization that also includes Ithaka S+R and Portico. For more information about JSTOR, please contact support@jstor.org.

subsequent act is given effect and the contract is impaired by the passing of the subsequent act. The difficulty with the reasoning is that if the statute was unconstitutional, the Legislature had no power to make the contract, and there is no contract obligation to be impaired.

If the Court could go as far as it did in this case to find an act which can be called "passing a law," they could well have gone still further. As a practical matter it does not seem to be open to argument that the same result is produced upon contracts made upon the faith of a former decision by a change of decision, as is produced by the repeal of a law by which contract obligations are created. It would not be impossible to construe the words of Article I, Section 10, to include a change of judicial decision. It might be said that the passing of a law consists in the passing of a statute plus the judicial construction of it, and that each change of decision results in the passing of a new law. The logic of the last suggestion is not very convincing, but it might justify the enlarged construction if any justification were necessary. The question is purely one of construction and policy.

The objection to such an enlarged construction is that the State courts would be deprived of almost all their final jurisdiction in cases involving a contract right, and the United States Supreme Court would be flooded with such a mass of litigation that the Court as at present constituted could never handle it.

FAILURE TO GIVE NOTICE OF INTENTION TO EXCAVATE.—In *Davis v. Summerfield et ux.* (N. Car. 1902) 42 S. W. 818, it was held that the defendant's failure to notify the owner of the adjacent lot of the extent of his proposed plan of excavation amounted to negligence and rendered him liable for the resulting injury to the plaintiff's house.

That the so-called natural right to lateral support exists only in favor of land in its natural state, and does not extend to the support of buildings erected upon it, is stated broadly by all the text writers. The statement as an absolute rule of law, however, would be erroneous. For to say that A owes B no duty whatsoever to protect the buildings which B has placed on the confines of his land, is to say that A is protected in any excavation he may choose to make even though he act with a total disregard for the damage that may accrue to B's buildings. It would seem that the true test should be what is a reasonable user by A and B, each considering the circumstances of the other. If it is not unreasonable for A to improve his land by building on it, even though he thereby increases the lateral pressure on B's land, then it is not unreasonable to require B to use due care in excavating. Accordingly we find the rule that one landowner does not owe his neighbor any support for the extra weight of superstructures on his land, qualified by the statement that if the lateral support is "negligently" withdrawn from land encumbered with buildings, a liability arises. *Dodd v. Holme* (1834) 1 Ad. & El. 493; *Austin v. H. R. R. Co.* (1862) 25 N. Y. 334; *Shafer v. Wilson* (1875) 44 Md. 268. Just how much care must be exercised is not clearly stated in any of the cases. The one excavating need not use the same degree

of care in regard to his neighbor that he would use were the buildings his own, *Charles v. Rankin* (1856) 22 Mo. 566; nor is he bound to shore up his neighbor's building, *Peyton v. Mayor of London* (1829) 9 B. & C. 725. Whether he is bound to give notice of his intention to excavate is a question about which the authorities are conflicting. The doubts expressed in the earlier cases were settled in England in *Chadwick v. Trower* (1839) 6 Bing. N. C. 1 where it was said: "The duty of giving notice in such cases seems to be one of those imperfect obligations which are not enforced by our law." In the United States, however, there is some authority in support of the decision in the principal case that failure to give notice is negligence *per se*; *Lasala v. Holbrook* (1833) 4 Paige 163; *Shultz v. Byers* (1891) 53 N. J. L. 442. Other cases, however, hold merely that by giving notice the defendant is relieved from the duty of taking extra precautions. *Shrieve v. Stokes* (1848) 8 B. Mon. 453; *City of Covington v. Geyler* (1892) 93 Ky. 275; *Bohrer v. The Dienhart Harness Co.* (1898) 19 Ind. App. 489; *Bonaparte v. Wiseman* (1899) 89 Md. 12. Still others speak of it as a reasonable precaution. *Winn v. Abeles* (1886) 35 Kans. 85.

The latter case suggests the true test. The necessity of giving notice should depend on what under the circumstances of each case is reasonably required. A failure to give notice at all, or, as in the principal case, a failure to give notice of the extent of the proposed excavation, should be sent to the jury as evidence—though not conclusive—of that want of due care which the defendant should have used. *Montgomery v. Trustees* (1883) 70 Ga. 38.

MUTUAL CONTROL OF CORPORATIONS BY EXCHANGE OF MAJORITY OF STOCK.—A new scheme of combining corporations, even more ingenious in its conception and more startling in its possibilities than that of a holding company, has been frustrated by the New Jersey Court of Chancery. The directors and majority stockholders of an insurance company, and the directors of a trust company, many of the latter being also among the former, formed a plan by which the trust company was to acquire a majority of the stock of the insurance company, was to double its own capital, and was then to issue the new stock to the insurance company, which, having already some shares of the first issue, would then have a controlling interest in the trust company. The result would be that the directors elected at the first election held by either company after the plan was executed would have complete control of both companies, and would hold a position from which they could never be dislodged. At the suit of some minority stockholders of the insurance company, however, the execution of the plan was enjoined. The grounds of the injunction were first, that the statutory power of the insurance company to "purchase" stocks of other corporations "for the purpose of investment" did not include an authority to subscribe to a new issue of shares for the purpose of controlling the company issuing them; and second, that the directors had no right to use the funds of the company in intentionally bringing about a situation where the voting power of stock would be separated from the beneficial interest in it. *Robotham v. Prudential Ins. Co.* (N. J. 1903) 53 Atl. 842.